



September 4, 2012

U.S. Environmental Protection Agency
(WW-16J)
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Via electronic mail: r5_cr595_comments@epa.gov

RE: Public Notice No. 11-52-0075-P, Marquette County Road Commission

Dear Ms. Haveman:

Thank you for this opportunity to offer formal comments on your agency's objections to the Section 404 Clean Water Act permit application submitted by the Marquette County Road Commission to the Michigan Department of Environmental Quality. These comments are submitted on behalf of the National Wildlife Federation ("NWF"), an international conservation and education organization which is keenly interested in protection of the Great Lakes, including the outstanding wetland and fresh water resources in the basin. In your oversight role, I urge you to maintain your agency's previously-stated objections to the proposed County Road 595 in Michigan's Upper Peninsula, particularly those related to the applicant's failure to provide meaningful alternatives analysis.

Inadequate Alternatives Analysis

While the application considers numerous routes, it considers only one mode of transportation—motor vehicle transportation. NWF submits that rail transportation could serve the stated project purpose objectives much more effectively than motor vehicle traffic in any configuration. The current application in no way demonstrates that the preferred alternative is the least environmentally damaging practical alternative (“LEDPA”). Rail transportation requires a much smaller footprint than a roadway. Rail transportation results in fewer air emissions and requires less fuel than motor vehicle traffic. Rail transportation is far safer than motor vehicle traffic and would allow the route used to maintain its rural character. Using rail would allow for the transport of ore and timber, while not opening up critical wildlife habitat to development and greater fragmentation from secondary development from a new motor vehicle route.

Nowhere in the application are the effects of secondary development addressed. If a new County Road were to be developed between the Humboldt Mill and the Eagle Mine, it would open the area to further residential and commercial development. While NWF believes that the Eagle Mine was wrongfully permitted by the Michigan Department of Environmental Quality, we also recognize that, at least until this road was proposed, the footprint of the mine site was relatively small and confined. If the proposed County Road 595 is built, it will result in a sprawling array of residential development and spin-off commercial development far flung through what is now among the best of the Upper Peninsula’s wildlife habitat. This project will impact the Upper Peninsula on a landscape level, and far beyond the road right of way.

Unaddressed Wildlife Concerns

Even with rail, the applicant must address the endangered species act concerns raised by the U.S. Fish & Wildlife Service. I am personally aware of and have heard and observed Kirtland's warbler in very close proximity to the preferred route. Canada lynx is also a species known to exist in the area for which the applicant has not addressed potential impacts. In addition to threatened and endangered species, the construction methods proposed for the wetland areas, twenty-five foot embankments, will impede movement of small rodents and amphibians. Last, the applicant must assess secondary impacts from its project. If a motor vehicle route is constructed in a previously wild area, the impacts spread far further than the project footprint due to the likely development that would follow the roadway. Large mammals like wolves, moose and bear are known to live in the project area and require large tracts; impacts the these animals have been glossed over.

Additionally, the Michigan Department of Natural Resources (MDNR) has confirmed the presence of *Puma concolor*, mountain lion, in the central Upper Peninsula in recent news reports. Due to intense public interest, the exact locations of sightings remain confidential, but at a minimum, EPA should elicit information about the potential presence of mountain lions in the project area and consider impacts to them. The project simply cannot be approved in any configuration until wildlife impacts are understood and satisfactorily addressed.

Rio Tinto Must Assess Cumulative Impacts from Transportation According to Michigan Law; This Information Should Be Made Available to EPA

While I am aware that the application of state law is beyond the realm of EPA's authority, you should be aware that Rio Tinto has an unmet responsibility under Michigan's

Natural Resources and Environmental Protection Act, Part 632, MCL 324.63201 *et al*, to assess impacts from “transportation of overburden, waste rock, ore, and tailings” in the cumulative impacts analysis required by Mich. Admin. Rule 425.202(b). It also must, under Part 632’s administrative rules, describe “Roads, railroads, docks, piers, and other transportation infrastructure, and provisions to prevent release of contaminants to the environment from ore or waste rock during transportation.” Mich. Admin. Rule 425.203(c)(xviii). While EPA cannot enforce MDEQ’s rules or Michigan statutes, certainly if these Michigan-required analysis were actually performed, they would greatly assist EPA by providing necessary information that is so far lacking in all applications involving transportation of ore.

Hearing

Last, I must commend Ms. Hyde on her facilitation of the public hearing held in Marquette on August 28. She handled a large and passionate crowd very well. My one concern about the evening was that while elected officials were invited to speak first, representatives of tribal sovereign nations were left with the dregs until after 10pm. This seemed to me a real slap in the face to the tribal nations present that evening.

In conclusion, I appreciate the opportunity to submit these comments. Please contact me at 906-361-0520 if you would like additional information.

Sincerely,

A handwritten signature in black ink that reads "F. Michelle Halley". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

F. Michelle Halley
Attorney and Lake Superior Project Senior Manager